



NOTICE OF PROPOSED RULEMAKING

The Office of Administrative Hearings (OAH) proposes to adopt the regulation described below after considering all comments, objections, or recommendations regarding the proposed action.

Proposed Regulatory Action

OAH proposes to amend 1 CCR 1038, regarding Ordering the Record (Transcripts) and correct the division and chapter title.

Public Hearing

At this time, OAH has not scheduled a public hearing. Any interested person or his or her duly authorized representative may request a hearing pursuant to Government Code section 11346.8 no later than 15 days prior to the close of the comment period.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OAH. All written comments must be received no later than **May 12, 2003**.

Requests for a public hearing or written comments for OAH's consideration should be directed to the contact person indicated below.

Contact Person

Inquiries concerning the substance of the proposed action and requests for a copy of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, the final statement of reasons, when prepared, or other information upon which the rulemaking is based should be directed to:

Heather Cline Hoganson (backup: Margaret Farrow)

Office of Administrative Hearings

560 J Street, Suite 300, Sacramento, CA 95814

(916) 322-2536

(backup: (916) 445-4926)

The text of the proposed regulation and the initial statement of reasons will be available at OAH's web site, at <http://www.oah.dgs.ca.gov>.

Availability of Statement of Reasons & Text of Proposed Regulations

The contact person will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and any data considered. A copy may be obtained by contacting Ms. Hoganson at the address or telephone number listed above.

Availability of Changed or Modified Text & Final Statement of Reasons

Following the comment period, OAH may adopt the proposed regulation substantially as described in this notice. If modifications are made which substantially change the originally proposed text, the modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which OAH adopts the regulation. Requests for copies of any modified regulation should be sent to the attention of Ms. Hoganson at the address indicated above. OAH will accept written comments on the modified regulation for 15 days after the date on which it is made available.

If the proposed regulation is not significantly modified, OAH may adopt the proposed amendments to the regulation substantially as described below.

A final statement of reasons will be prepared before the proposed regulation is sent to the Office of Administrative Law. Requests for copies of the final statement of reasons should be sent to the attention of Ms. Hoganson at the address indicated above.

Informative Digest / Overview

The Administrative Procedure Act (Government Code 11340-11520) governs agencies with regard to rulemaking and adjudication. Formal Hearings are governed by Chapter 5, Government Code 11500-11529. The Office of Administrative Hearings (OAH) provides administrative adjudications for state agencies, and has developed rules of procedure for those hearings held under the Administrative Procedure Act. One of those rules regards the ordering of the administrative record, including the transcript, of an administrative adjudication. This regulation has been rewritten for clarity and to detail a change in procedure.

Authority & Reference

The authority for the proposed regulations is found in the Administrative Procedure Act, Government Code 11370.5(b). This statute authorizes OAH to adopt rules and regulations to carry out the functions and duties of OAH under the Administrative Procedures Act. References to Section 1094.5, Code of Civil Procedure, Section 11512 and 11523, Government Code, and Section 985, California Rules of Court, relate to the recording of a hearing and the procurement of the record/transcript.

DETERMINATIONS

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS: None

COST OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS: None

EFFECT ON HOUSING COSTS: None

COST OR SAVINGS TO STATE AGENCIES: None

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE: None

ASSESSMENT OF ECONOMIC IMPACT ON PRIVATE PERSONS OR BUSINESSES; SMALL BUSINESSES: Pursuant to Government Code 11346.5(a)(9), The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed action does not generate any new costs on private persons, businesses, or small businesses.

ASSESSMENT OF ECONOMIC IMPACT ON BUSINESSES AND JOBS: Pursuant to Government Code 11346.5(a)(7), (8), and 11346.3(a)(2), OAH has made an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because (a) ordering the record (or transcript) is voluntary and (b) the amount of the record/transcript is not being changed, only who is managing the order. Pursuant to Government Code 11346.3(b)(1), OAH has determined that the proposed regulations will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

Consideration of Alternatives

The Office of Administrative Hearings must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected persons than the proposed action.

Initial Statement of Reasons

Division Title.

The “Contract Hearing Procedures” part of the title is being deleted as a technical change. This part of the title originally went with different regulations, and should have moved with them when OAH reorganized its regulations in 1997.

Chapter Title.

The effective date of July 1, 1997 is being deleted as it is no longer necessary. The original regulations were developed to be effective the same date as the effective date of the revised Administrative Procedure Act. As the regulations are currently in effect, it may be confusing to leave the date in the chapter title.

Section 1038. Ordering the Record.

A party may wish to obtain an official transcript or copies of exhibits or audio tapes, either in anticipation of appealing a decision or for other personal reasons. This regulation explains what the administrative record is and how to order all or part of the record, including payment requirements.

Additionally, pursuant to process changes required by the Governor’s Budget, effective July 1, 2003, agencies will be providing their own court reporters (instead of OAH arranging for one), so the revised sub (f) was added to address the change in procedure.

Technical changes; rewritten for greater clarity. Redundancy of statutory language deleted.